

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CAMERON L.,

Plaintiff,

vs.

KILOLO KIJAKAZI, Acting
Commissioner of the Social Security
Administration,

Defendant.

8:20CV440

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's fourth motion for appointment of counsel (Filing 32). In a Memorandum and Order entered on March 3, 2021, the court stated that while it had "concerns about Plaintiff's physical and mental ability to present his claims, it [was] not convinced Plaintiff ha[d] made a diligent effort to obtain counsel on his own." (Filing 29 at 3). In order to give Plaintiff additional time to obtain counsel, the court on its own motion extended the deadline for Plaintiff to file a motion for an order reversing the Commissioner's decision until June 1, 2021. That deadline was subsequently extended on Plaintiff's motion, until August 2, 2021, which is when Plaintiff filed the fourth motion for appointment of counsel.

While Plaintiff has now made a showing of his attempts to obtain counsel, he has also filed a "motion for approval [of] SSI disability or new hearing" (Filing 22), which was prepared with the assistance of a paralegal. The court construes this filing as a motion for an order reversing the Commissioner's decision, combined with a supporting brief. This motion/brief is 22 pages long, and has 83 pages of attached exhibits. Upon initial review, this document appears to identify clearly the issues presented on appeal, and Plaintiff's arguments are presented in an intelligible manner. Although the document does not strictly comply with the court's directives, *see* General Order No. 2015-05 (Filing 3), it will be given a liberal construction and,

with the possible exception of the attached exhibits,¹ will be considered by the court. Because this document has alleviated the court's concerns about Plaintiff's ability to present his claims, his renewed motion for appointment of counsel will be denied without prejudice, and Defendant will be directed to file a motion for an order affirming the Commissioner's decision with a supporting brief. Plaintiff will then have an opportunity to reply to Defendant's brief. On its own motion, the court will extend the reply time to 30 days (rather than the normal 14 days).

IT IS THEREFORE ORDERED:

1. Plaintiff's renewed motion for appointment of counsel (Filing 32) is denied without prejudice to reassertion.
2. Defendant is directed to file a motion for an order affirming the Commissioner's decision, together with a supporting brief, within 30 days of today's date.
3. Plaintiff shall have 30 days after service of Defendant's motion and brief to file a reply.

Dated this 9th day of August 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge

¹ "The Social Security Act generally precludes consideration on review of evidence outside the record before the [Commissioner]." *Delrosa v. Sullivan*, 922 F.2d 480, 483 (1991) (citations omitted); *see Allen v. Astrue*, 781 F. Supp. 2d 868, 877 (D. Neb. 2011) (new evidence provided with plaintiff's brief would not be considered by the district court, and case would not be remanded for consideration of such evidence at the administrative level because plaintiff did not demonstrate good cause for failing to submit the new evidence).